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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,192	11/14/2003	Cosmin Dini	50325-0827	9354
29989 7590 07/22/2008 HICKMAN PALERMO TRUONG & BECKER, LLP 2055 GATEWAY PLACE SUITE 550 SAN JOSE, CA 95110				
EXAMINER				
OSMAN, RAMY M				
ART UNIT		PAPER NUMBER		
2157				
MAIL DATE		DELIVERY MODE		
07/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/714,192

Applicant(s)

DINI ET AL.

Examiner

RAMY M. OSMAN

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-24 and 26-54 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 3-24 and 26-54 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date 5/19/08
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. This action is responsive to amendment filed on April 23, 2008, where applicant amended claims 1,13,20,24,36,43,44,51-54. Claims 1,3-24,26-54 remain pending.

Response to Arguments

2. Applicant's arguments, filed 4/23/2008, with respect to claims 1,3-24,26-54 have been considered but are not persuasive.
3. Previous 101 rejections are withdrawn in view of the amendments.
4. Applicant argues that Puranik teaches availability of different entities, whereas Applicants invention as mentioned in claim 1 is regarding availability values of the same entity. *In reply*, claim 1 for example mentions "availability of a network element or service". This language is in the alternative form which renders the claim (and subsequent claims) unclear as to whether the values relate to the same or different entities. It is possible that the first availability value can be in regards to the network, and which can be considered as one entity. While the second availability value can be in regards to the service, which can be considered as another entity different from the first entity. This is how the Puranik reference is applied. The claims are vague and unclear in this regard.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1,3-24,26-54 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims mention "availability of a network element or service". This alternative language renders the claims unclear because it is not known whether the value in one instance refers to the "network element" and whether another mention of a value in another instance would then refer to the "network element" or to the "service" (and vice versa). The claims language lack consistency and are not explicitly clear in this regard.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,7-9,13,14,24,30-32,36-37,43-47,51,54 rejected under 35 U.S.C. 102(b) as being anticipated by Puranik et al (US Patent No 6,003,090).

9. In reference to claim 1, Puranik teaches a method of measuring the availability of a network element or service, the method comprising the computer-implemented steps of:

determining a second availability value based on a first availability value, a first time value, a second time value that differs from the first time value, and a first operational state value (column 7 lines 7-15 & 23-37); and

storing, in memory, the second availability value (column 7 lines 54-58);

wherein determining the second availability value further comprises: determining a dividend based on the first availability value, the first time value, the second time value, and the first operational state value; and dividing the dividend by the second time value; wherein the first availability value indicates the availability of the network or service at the first time value; wherein the second availability value indicates the availability of the network or service at the second time value; and wherein the first time value indicates a first time that is earlier than a second time indicated by the second time value (column 7 lines 7-15).

10. In reference to claim 7, Puranik teaches a method as recited in Claim 1, further comprising the steps of: determining a third availability value based on the second availability value, the second time value, a third time value that differs from the second time value, and a second operational state value(column 7 lines 15-24); and storing the third availability value (column 7 lines 54-58).

11. In reference to claim 8, Puranik teaches a method as recited in Claim 1, wherein determining the second availability value further comprises the steps of: detecting a command; and in response to detecting the command, determining a third availability value based on the second availability value, the second time value, a third time value that differs from the second time value, and a second operational state value (column 7 lines 7-37).

12. In reference to claim 9, Puranik teaches a method as recited in Claim 1, further comprising the steps of: detecting an event while a current state is a first state that is in a first state cluster; in response to detecting the event, selecting, based on the current state and a type of the event, a second state that is in a second state cluster; determining whether the first state and the second state are in different state clusters (column 6 lines 9-30); and

in response to determining that the first state and the second state are in different state clusters, determining a third availability value based on the second availability value, the second time value, a third time value that differs from the second time value, and a second operational state value that differs from the first operational state value (column 7 lines 15-24).

13. In reference to claim 13, Puranik teaches a method of measuring the availability of a network element or service, the method comprising the computer-implemented steps of:

determining a second availability value based on a first availability value, a first time value, a second time value that differs from the first time value, and a first operational state value (column 7 lines 7-15 & 23-37); and

storing the second availability value (column 7 lines 54-58);

determining a third availability value based on a first availability value, the second availability values, and a weight value (column 7 lines 15-24); and

storing the third availability value (column 7 lines 54-58).

14. In reference to claim 14, Puranik teaches a method as recited in Claim 13, wherein determining the third availability value further comprises the steps of: determining a dividend based on the first availability value, the second availability value, and the weight value; determining a divisor based on the weight value; and dividing the dividend by the divisor (column 7 lines 1-15).

15. In reference to claims 24 & 30-32, these are computer readable storage medium claims that correspond to the method claims of claims 1 & 7-9. Therefore, claims 24 & 30-32 are rejected based upon the same rationale as given for claims 1 & 7-9 above.

16. In reference to claims 36-37, these are computer readable storage medium claims that correspond to the method claim of claim 1. Therefore, claims 36-37 are rejected based upon the same rationale as given for claim 1 above.

17. In reference to claims 43-47,51 & 54, these are apparatus claims that correspond to the method claims of claims 1 & 7-9. Therefore, claims 43-47,51 & 54 are rejected based upon the same rationale as given for claims 1 & 7-9 above.

Conclusion

18. The above rejections are based upon the broadest reasonable interpretation of the claims. Applicant is advised that the specified citations of the relied upon prior art, in the above rejections, are only representative of the teachings of the prior art, and that any other supportive sections within the entirety of the reference (including any figures, incorporation by references, claims and/or priority documents) is implied as being applied to teach the scope of the claims.

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMY M. OSMAN whose telephone number is (571)272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. M. O./
Examiner, Art Unit 2157
July 15, 2008

/Ario Etienne/
Supervisory Patent Examiner, Art Unit 2157